

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

CRP.No. 279 of 2005(C)

**(AGAINST THE ORDER AND JUDGMENT IN CMA.4/2004 OF DISTRICT COURT,
THALASSERY DATED 23RD JULY, 2004)**
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REVN. PETITIONER: APPELLANT/1ST DEFENDANT-PETITIONER

**K.A.PRABHAKARAN S/O. KRISHNAN,
AGED 60 YEARS RESIDING AT "LAKSHMI NIVAS",
THIRUVANGAD, AMSOM, KAVUMBHAGAM DESOM.**

BY ADV. SRI.V.RAJAGOPAL

RESPONDENTS: RESPONDENTS/PLAINTIFF AND DEFENDANT 2.

**1. M/S. LORD KRISHNA BANK LTD.,
TELLICHERRY BRANCH, REPRESENTED BY ITS
BRANCH MANAGER**

**2. E.K.PRAVEEN S/O.PRABHAKARAN,
AGED 32 YEARS, LAKSHMI NIVAS,
THIRUVANGAD AMSOM, KAVUMBHAGAM DESOM,
P.O.KAVUMBHAGAM.**

**BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL) -- R1
SRI.ANAND.V.J.**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

M.N.KRISHNAN, J

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C.R.P. No.279 OF 2005

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Dated this the 6th day of November 2007

ORDER

This revision petition is preferred against the order of the District Judge, Thalassery in C.M.A.No.4 of 2004. It was an appeal preferred by the first defendant in O.S.No.122 of 2001 of the Sub Court, Thalassery to set aside the ex parte decree. The suit was decreed on 28.5.2003 and on 12.6.2003 an application was filed to set aside the ex parte decree. PW1 was examined and Ext.A1 medical certificate was produced. The contention of the revision petitioner was that he was laid up due to jaundice from 15-5-2003 to 11-6-2003. Both the courts below did not accept the evidence of PW1 and found that there are no grounds to set aside the ex parte decree and therefore dismissed the application. The appellate court also found that a written statement has been filed by the appellant wherein no valid contentions had been raised. The execution of the document and the transaction were admitted. There was only some dispute regarding the rate of interest. The interest claimed was 25.25%. The court did not allow that interest but only allowed 12% . The appellate court also found that it

was a commercial transaction and granting of 12% interest was not excessive. On these grounds, the application was dismissed. I feel that both the courts below had applied their minds to the facts and circumstances of the case and especially the contentions in the written statement and arrived at a decision that the application is to protract the execution proceedings. I do not find any ground to interfere with the decision rendered by the courts below. Therefore the C.R.P. is dismissed.

2. I am informed that the execution petition is pending and sale is to be proceeded with. Learned counsel for the bank submitted that no time need be given to the petitioner because of the attitude of the petitioner for protraction of the proceedings. Learned counsel for the petitioner strongly urges before me that the petitioner had paid a considerable amount. It is a matter which requires consideration by the court below. Considering the facts and circumstances of the case I feel there must be a direction given to the execution court not to sell the property for a period of 4 months from today, so that the petitioner can wipe off the liability and save his property. If the amount is not paid the execution court is at liberty to proceed with the

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sale of the property for realisation of the amount.

With the above observations, the writ petition is disposed of..

M.N.KRISHNAN, JUDGE

Cdp/-